

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GUGGENHEIM CAPITAL, LLC, AND
GUGGENHEIM PARTNERS, LLC,

Plaintiffs,

v.

CATARINA PIETRA TOUMEI, A/K/A LADY
CATARINA PIETRA TOUMEI A/K/A
CATARINA FREDERICK; VLADIMIR
ZURAVEL A/K/A VLADIMIR
GUGGENHEIM A/K/A VLADIMIR Z.
GUGGENHEIM A/K/A VLADIMIR Z.
GUGGENHEIM BANK; DAVID BIRNBAUM
A/K/A DAVID B. GUGGENHEIM; ELI
PICHEL; THEODOR PARDO; DABIR
INTERNATIONAL, LTD., AND JOHN DOES
1-10,

Defendants.

Civil Action No. 10-CV-8830-PGG

JURY TRIAL DEMANDED

**DECLARATION OF JOHN J. DABNEY IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN ORDER OF CONTEMPT AWARDED SANCTIONS AGAINST
DEFENDANT BIRNBAUM**

I, John J. Dabney, hereby declare, affirm and state the following:

1. I am an attorney admitted to practice in the District of Columbia and will apply for *pro hac vice* admission before this Court for this case. I am a partner with the law firm of McDermott Will & Emery LLP, counsel for plaintiffs Guggenheim Capital, LLC and Guggenheim Partners, LLC in this action.

2. I have direct knowledge of the statements contained herein based upon, among other things, my personal knowledge, my representation of Plaintiffs in this matter, my review of documents produced during discovery in this case, and my review of the pleadings filed in this matter, and could and would testify competently as to them if called to do so in a court of law.

3. I submit this declaration ("Declaration") in support of Plaintiffs' Motion for an Order of Contempt Against All Defendants.

4. On November 22, 2010, Plaintiffs filed the Verified Complaint in this action and an Ex Parte Application and Motion for (1) Temporary Restraining Order; (2) Order to Show Cause for a Preliminary Injunction; (3) Seizure Order; (4) Order Restraining The Transfer Of Assets; (5) Order Authorizing Alternative Service of Process; (6) Order Authorizing Expedited Discovery; and (7) Order Sealing File. Through that Ex Parte Application and Motion, Plaintiffs' sought the Court's authorization to serve expedited discovery requests to Defendants in the form of 10 requests for production of documents and 10 interrogatories. Plaintiffs' document requests and interrogatories to Defendants were attached to Plaintiffs' [Proposed] Order granting their Ex Parte Application and Motion. By Order dated November 22, 2010, the Court (Marrero, J.) authorized Plaintiffs to pursue expedited discovery, including, without limitation, to serve document requests and interrogatories to Defendants, which required Defendants to produce documents and information within four (4) calendar days of the service. A true and correct copy of Plaintiffs' requests for production of documents to Defendants is attached as Exhibit 1. A true and correct copy of Plaintiffs' interrogatories is attached as Exhibit 2.

5. Pursuant to the Temporary Restraining Order, Defendant Birnbaum was required to produce responsive discovery by November 28, 2010. Defendant Birnbaum did not produce any discovery by that date. On December 22, 2010, over 3 weeks after the Court-ordered discovery was due, Defendant Birnbaum requested and received an extension to respond to Plaintiffs' discovery requests until January 5, 2011. (Dkt. Nos. 30, 33.) On January 4, 2010,

Defendant Birnbaum requested an extension of time to respond to the discovery requests until January 10, 2011. Plaintiffs granted the extension.

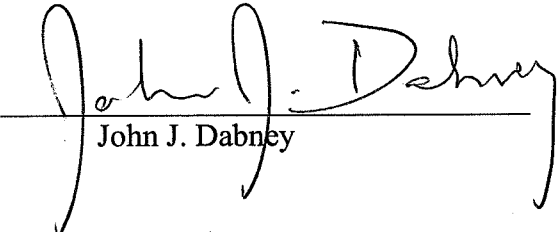
6. A true and correct copy of Defendant Birnbaum's January 10 responses to Plaintiffs' requests for production of documents, along with the documents produced, are attached as Exhibit 3. A true and correct copy of Defendant Birnbaum's January 10 responses to Plaintiffs' interrogatories are attached as Exhibit 4.

7. At 4:51 p.m. on January 31, 2011, Defendant Birnbaum emailed discovery responses to Plaintiffs' counsel. A true and correct copy of Defendant Birnbaum's January 31 responses to Plaintiffs' requests for production of documents are attached as Exhibit 5. A true and correct copy of Defendant Birnbaum's January 31 responses to Plaintiffs' interrogatories are attached as Exhibit 6.

8. On February 1, 2011 Plaintiffs deposed Defendant Birnbaum at McDermott Will & Emery LLP's New York office located at 340 Madison Avenue, New York, NY 10173. Defendant Birnbaum's counsel Ben Manevitz, of the Manevitz law firm, was present and participated in the entire deposition. A true and correct copy of the deposition transcript is attached as Exhibit 7.

9. A true and correct copy of the transcript of the Court's January 13, 2011 hearing on Defendant Birnbaum's discovery responses is attached as Exhibit 8.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Washington, DC, on February 7, 2011.


John J. Dabney